WONG YEEN PEN

v.

SHARIFUDIN YUSOF

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL SUIT NO. 549 OF 1983]
29 JUNE 1989

TORT: *Negligence - Accident between pedestrian and motorcyclist - Injuries sustained: Cerebral concussion, fractures to left and right femur and fibula, shortening of 4 cm to right femur and 6 cm to left femur - Loss of future earnings - Earning capacity, assessment of damages.*

This was a claim for damages for negligence. There was an accident between a pedestrian, the plaintiff who was knocked down by a motorcyclist, the defendant. The plaintiff was crossing the road from a divider of a dual carriage way heading to a bus stop opposite him at which time be observed that the road was clear of traffic except for a solitary motorcar some distance away. The defendant was not visible to plaintiff as he was about 2 to 3 feet from the edge of the road and travelling behind the said car. At a speed, the defendant overtook the said car and inevitably knocked down the plaintiff.

As a result of the said accident, the plaintiff suffered: cerebral concussion, fractures of the right and left femurs, fractures of the left tibia and fibula which resulted in 46 cm shortening of the right femur and 6 cm shortening of the left femur. Consultant orthopaedics surgeons Dr. K. Thambyrajah further testified for the plaintiff that there is a gross angulation of left femur and abduction in the left knee resulting in weakening of affected muscles and permanent gross deformities in both legs. He further stated that his progressive instability in both knees will inevitably lead to asteoarthritis.

Held:
The defendant was 100% liable for negligence and damages were awarded to the plaintiff as follows:

(a) General Damages for pain & suffering and loss of amenities at RM40,000 with interest at 6% from date of service of writ.

(b) Loss of future earnings at RM41,000 with no order as to interest.

(c) Special Damages agreed at RM700 at 3% interest from the date of accident.

(d) Cost to be taxed or agreed upon.

Cases referred to:
Mohandas s/o Lachiram v. Tahir bin Mat Yassin [1986] 2 MLJ ccx
Chan Hon Fah v. Khoo Hoon Ann [1988] 1 CLJ (Rep) 428
Lee Eng Beng & Anor. v. Torairajah A/I Appavoo @ Kamal Bin Abdullah & 2 Ors. [1986] CLJ (Rep) 173

JUDGMENT

LC Vohrah J:

The plaintiff has testified clearly and unequivocally that when he began to cross the road with his younger brother from the divider of the dual carriage way to the bus stop opposite him the road to his left was clear of traffic except for a solitary car some distance away. The defendant has stated in evidence that he was riding his motor cycle behind this motor car about 2 to 3 feet away from the edge of the road so that he would not have been visible to the plaintiff. The defendant to his credit admitted that he was riding his motor-cycle very fast that morning and that when he overtook the car he did not look to his right but had merely concentrated on what was happening on his left side. The time of the accident was about 7.00 a.m. and the time the defendant had to report for work at Senai Airport as a traffic hand was 7.15 a.m. Although he said that he was in no hurry to get to work that day because no transport had been provided by his employer it would have been quite natural for him to be under some pressure to be on duty as near reporting time as possible. As he admitted his attention was confined to his left side whilst riding his motor cycle just before the accident, he must have been aware that there were students waiting at the bus stop (according to the plaintiff's evidence which was not contradicted by the defence) sited ahead of him on his left. It is clear on his own evidence that the defendant had failed to keep a proper lookout for had he done so he would have seen the plaintiff and his brother attempting to cross the road. I do not think in the circumstances of this case any negligence can be attributed to the plaintiff as there was no evidence to indicate he was in any way prohibited from crossing the road at the point that he did. I therefore find the defendant fully to blame for the accident.

As a result of the accident the plaintiff suffered cerebral concussion, fractures of the right and left femurs and fractures of the left tibia and fibula. In consequence the plaintiff has a shortening of the right femur of 4 cm. and the left femur of 6 cm. and the consultant orthopaedic surgeon, Dr. K. Thambyrajah, called on behalf of the plaintiff, has testified that there is gross angulation in the right femur and abduction in the right knee and that similarly there is angulation in the left femur and abduction in the left knee resulting in weakening of the affected muscles and permanent gross deformities in both legs as evidenced by the photographs in ABB1-2. He states further that both knees are unstable and that there will be progression of this instability with inevitable onset of osteoarthritis. There is no question that the plaintiff cannot walk fast or run; nor can he perform jobs that require long periods of standing, lifting heavy weights or working on ladders and scaffoldings. My attention has been drawn to three cases, namely *Mohandas s/o Lachiram v. Tahir bin Mat Yassin* [1986] 2 MLJ ccx, *Chan Hon Fah v. Khoo Hoon Ann* [1988] 1 CLJ (Rep) 428 and *Lee Eng Beng & Anor. v. Torairajah A/I Appavoo @ Kamal Bin Abdullah & 2 Ors.* [1986] CLJ (Rep) 173, as to the amount of damages to be awarded for pain and suffering and loss of amenities in regard to similar injuries in one leg. The plaintiff has however suffered similar injuries in both legs. RM25,000 to RM35,000 would appear to be the range of the damages to be awarded for such injuries in one leg alone and Counsel for the plaintiff has asked for whatever sum which I should consider appropriate for injuries to one leg to be doubled. I am conscious on the leg authorities that the normal award for injuries resulting in the amputation of a leg below the knee is around RM50,000. Although the plaintiff has suffered injuries in both legs he still has the facility of walking on both his legs and his condition cannot, in my view, be described as worse than that of a person with an amputated leg. In the circumstances I think

it fair and reasonable that I award the sum of RM40,000 as general damages for pain and suffering and loss of amenities arising from the injuries to both his legs with interest at 6% per annum from the date of the service of the writ.

I now come to the question of the loss of future earnings. Reference has been made by Counsel for the plaintiff to *Yang Salbiah & Anor. v. Jamil Bin Harun* [1981] 1 MLJ 292 as a guide. Since the plaintiff has no educational qualifications with which to earn a livelihood except for whatever manual skills he can acquire, the natural occupation for him is the trade that he is presently in with his father who is a plumbing subcontractor. It is clear that his earning capacity as a plumber would never equal that of a person with normal mobile and flexible lower limbs because of the gross angulation and abduction which he suffers in his thighs and knees respectively making it impossible for him to squat or to stand for any considerable period of time in any plumbing job. The undisputed evidence is that an ordinary plumber earns about RM40 per day on a subcontract assignment and on the assumption that he works on an average of 20 days in a month he can earn abut RM800 per month. On the basis of this figure I would estimate the plaintiff's loss because of his disabilities at RM250 per month and allowing him, at his present age of 19, a multiplier of 24 I would award the resultant sum of RM41,400 as loss of future earnings. This sum will bear no interest. I would also award the agreed sum of RM700 for special damages with interest at 3% per annum from the date of the accident. The plaintiff will be entitled to his costs to be taxed or agreed upon.

Also found at [1989] 2 CLJ 1098